July 6, 2016

Chairman Bob Goodlatte
2138 Rayburn House Office Building
Washington, DC 20515

Ranking Member John Conyers
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

I write on behalf of the National Council on Disability (NCD) regarding H.R. 3765 the “ADA Education and Reform Act of 2015” in accordance with our mission as an independent federal agency tasked with making recommendations to the President and Congress on policy matters affecting the lives of Americans with disabilities. Given this mission, NCD is responsible for providing advice regarding the implementation and enforcement of the Americans with Disabilities Act (ADA) – a law with which NCD has an inextricably connected history.

NCD first proposed the concept of the ADA in 1986. Congress relied on and acknowledged the influence of NCD, its reports, and its testimony throughout the legislative process leading up to its passage and in 1990, the ADA was signed into law by President George H.W. Bush. Since passage of the ADA, NCD has remained actively involved in disability policy, including working with Congress to amend the ADA in 2008, recalibrating it to address discrimination in a broad array of circumstances after interpretation of the law was narrowed by the federal courts.

In 2012, NCD submitted a Statement for the Record to this Committee expressing concern regarding legislation that proposed “…to amend the ADA to require that an individual alleging a business is inaccessible provide written notice to the business about the specific ADA violation before bringing suit.” The proposed legislation before the Committee at today’s mark-up, H.R. 3765 the “ADA Education and Reform Act of 2015” is essentially similar to that earlier legislation and it is still NCD’s position that:

Title III of the ADA was intended to balance the interests of small businesses along with the accessibility concerns of people with disabilities. It is a myth that the ADA’s requirements are too hard on small businesses. The legislative history of the ADA is rife with concern about the burden on small businesses and as a result, Title III does not require any action with respect to existing buildings that would cause an undue burden or that is not readily
achievable. The approach of the ADA was not to exempt small businesses from the requirements of the bill, but rather to tailor the requirements of the Act to take into account the needs and resources of small businesses—to require what is reasonable and not to impose obligations that are unrealistic or debilitating to businesses.¹

Since NCD issued this statement, businesses small and large—and the state and federal agencies that regulate them—have had four more years (nearly 26 total years now) to ensure compliance with the reasonable and balanced requirements of the ADA, and yet legislation that seeks to place the onus on the person with a disability who is prevented from spending their money to purchase goods and services from an inaccessible business is again under consideration by this Committee. While we all support small businesses and appreciate the valuable role they play in our economy, opening a business necessarily entails adherence to certain rules. For over 50 years, federal law prohibits businesses from engaging in discrimination based on race, religion, or sex, and for 26 years, they have been required to make their businesses accessible to people with disabilities. These requirements are widely known and ascertainable by any responsible business owner. Shifting the responsibility to aggrieved individuals with disabilities who may already have suffered the indignity of discrimination is bad national policy, and it is an unacceptable and unprecedented rollback of the “...guarantee [of] fair and just access to the fruits of American life which we all must be able to enjoy...” that George H.W. Bush recognized the ADA to be when he signed this landmark legislation. At the signing, President Bush declared eloquently, “[W]e rejoice as this barrier falls for claiming together we will not accept, we will not excuse, we will not tolerate discrimination in America.”²

Discrimination remains as intolerable as it was 26 years ago when a bipartisan movement lead this country to declare that barriers to participation for people with disabilities was unacceptable, and as we did four years ago when this Committee considered similar legislation, NCD recommends that Congress follow its own careful considerations when enacting the ADA and reject these unnecessary amendments.

Respectfully,

Clyde Terry
Chairperson